

Express Mail No. EV262385641US
Appl. No. 09/738,234
Responsive to Office Action Dated October 3, 2002

REMARKS

This is responsive to the Office Action dated October 3, 2002 which was identified as a final Office Action. Therefore, Applicants are submitting this Amendment along with a Request for Continued Examination (RCE) along with a Request for Extension of Time as well as the appropriate fees for the RCE and the extension. As such, this Amendment is the submission required under 37 C.F.R. § 1.114.

Clarification of Office Action

In reviewing the Office Action dated October 3, 2002, Applicants note that the Office Action Summary indicates that claims 27-29 and 31 are pending in the application and that claims 27-29 and 31 are rejected. However, in the Detailed Action portion of the identified Office Action, Applicants note that in paragraph 4 on page 3 that claims 26-29 and 31 were rejected under 35 U.S.C. § 103(a). Applicants hereby request a clarification of the treatment of the claims based upon the inconsistency presented with the Office Action of October 3, 2002. Applicants records indicate that claim 26, as well as claims 27-29 and 31, were pending in this case as of October, 2002.

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Drawings

The Office Action indicates that the proposed drawing correction and/or the substitute sheet of drawings, filed on July 16, 2002, have been approved. As a result, Applicants are submitting herewith a proper drawing correction in the form of a complete corrected drawing page consistent with the proposed drawing correction that has been approved. Since the correction to the drawings was not held in abeyance, Applicants are providing the corrected drawing to avoid abandonment of the application as required in the Office Action.

Section 103 Rejections

The Office Action indicates that claims 26-29 and 31 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,492,398 issued to Schafer. The rejection alleges that Schafer discloses a dispensing structure with almost every structural limitation of the claimed invention but lacks:

- (1) A counter having a counter top;
- (2) The front and rear covers each hingedly mounted to a remainder of the housing;
- (3) The specifics of the counter top; and
- (4) The relationship between the counter top and the dispenser housing.

Applicant respectfully traverses the §103 rejections. Moreover, Applicant respectfully challenges each of the multiple instances that the Examiner relies upon

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Official Notice in the rejections. Therefore, Applicant respectfully demands evidence proving each of the features of the claims that are alleged by Official Notice to be old and well known in the art as cited in the Office Action.

In this regard, Applicant would like to note the admonition provided by the CCPA on this point:

[T]his court will always construe [the rule permitting judicial notice] narrowly and will regard facts found in such manner with an eye toward narrowing the scope of any conclusions to be drawn therefrom. Assertions of technical facts in areas of esoteric technology must always be supported by citation to some reference work recognized as standard in the pertinent art and the appellant given, in the Patent Office, the opportunity to challenge the correctness of the assertion or the notoriety or repute of the cited reference. Cf. In re Cofer, 53 CCPA 830, 354 F.2d 664, 148 USPQ 268 (1966), In re Borst, 52 CCPA 1398, 345 F.2d 851, 145 USPQ 554 (1965). Allegations concerning specific "knowledge" of the prior art, which might be peculiar to a particular art should also be supported and the appellant similarly given the opportunity to make a challenge. See In re Spormann, 53 CCPA 1375, 363 F.2d 444, 150 USPQ 449 (1966). In re Pardo and Landau, 214 USPQ 673, 677 (CCPA 1982) citing In re Ahlert, 57 CCPA 1023, 1027, 424 F.2d 1088, 1091, 165 USPQ 418, 420-21 (1970).

In addition to the deficiencies of the Schafer reference that are identified by the Examiner in the Office Action with respect to Applicants' claims, Applicants would like to point out that the Schafer reference wholly fails to disclose, teach or otherwise suggest a counter top upon which the device shown in Schafer would be

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mounted. In fact, the assignee of the present invention is familiar with the structure shown in the Schafer reference, as well as the commercial embodiments and items offered for sale by the assignee of the Schafer reference (Schafer Systems, Inc.). Typically, the devices shown in the Schafer reference are often utilized over the counter and are not supported on the counter top at all. Specifically, the Schafer Systems web site (www.schafersystemsinc.com) includes a photo showing the devices in the Schafer reference as being suspended above the counter top in two different configurations. The Schafer Systems web site further states that "this unit requires absolutely NO counter space." (Emphasis in original.) Copies of the relevant portions of the Schafer Systems, Inc. web site showing utilization of the devices shown in the Schafer reference above the counter top are enclosed herewith as Exhibit A (3 pages).

As such, Applicants respectfully assert that contrary to the assertions in the Office Action, the devices shown in the Schafer reference are not typically utilized on a counter top, the Schafer reference itself wholly fails to teach or suggest use on a counter top and the web site of the assignee of the Schafer reference distinctly teaches away from utilizing that dispensing device on a counter top. For at least these additional reasons, Applicants respectfully assert that the claimed invention herein is both novel and non-obvious over Schafer and the prior art of record and that it would

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not be well known in the art to utilize a dispenser in combination with the counter top as recited in Applicants' claims.

Additionally, Applicants have added new claims 41-44 herein, each of which are dependent either directly or indirectly from independent claim 26. New claim 44 recites that the dispenser housing is mounted on the counter top.

New claims 41-43 each recite that a portion of the front cover or the transparent portion of the front cover is arcuate as shown clearly in Fig. 1 of Applicants' specification. The arcuate configuration of this portion of the housing advantageously provides a guide for directing the tickets from the supply location toward the outlet. Such a structure is advantageously novel and non-obvious with respect to the Schafer reference which clearly shows a front wall joined to top, bottom and side walls at generally right angles to one another. The rectangular configuration of the Schafer structure provides for potential problems during dispensing of the tickets. As one might appreciate, the tickets are generally assembled in a fan-fold stack with each ticket being joined to an adjacent ticket by lines of perforation. While the tickets are being dispensed and traversing through the housing, a problem may arise with the Schafer structure in that the tickets may prematurely bend along the perforations and become lodged or jammed in one of the right angular corners of that dispenser. In fact, the ticket strip shown in Fig. 2 of the Schafer reference shows the ticket strip being

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dispensed as bent along one of the perforations. This situation becomes even more likely and problematic for the last few remaining tickets in the pack in that the other tickets are not present thereby allowing for the pre-creased line of perforation to be lodged within one of the right angular corners and adjacent the front of the dispenser. This situation is advantageously avoided by Applicants' claimed invention as recited in new claims 41-43 wherein the portion of the housing is arcuate, thereby providing a smooth guide for the tickets advancing toward the outlet without the likelihood of tickets becoming jammed in the right angular corners of the dispenser, as in Schafer. For at least these additional reasons, claims 41-43 are likewise patentably novel and non-obvious over Schafer and the other prior art of record.

Additionally, the dispenser shown in Schafer is typically stacked one upon another as shown generally in Exhibit A. Additionally, Figs. 5 and 7 of Schafer show front flanges and rear flanges (unnumbered) projecting downwardly from the bottom surface of that dispenser. Those flanges are adapted to mate with recessed pockets and slots (unnumbered) at the front and rear edges of the top wall of an adjacent dispenser. Because the structure shown in Schafer includes downwardly projecting flanges, Applicants respectfully assert that one of ordinary skill in the art would recognize that such a structure is not readily adapted for support directly on a counter top or other planar surface as in Applicants' claimed invention. As such, the device

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shown in Schafer is specifically designed for stacking one upon another and being suspended over the counter as displayed in Exhibit A.

Finally, Applicants would like to remind the Examiner of the interview conducted on March 5, 2002 between the undersigned attorney and Examiner Dexter. The Interview Summary signed by the Examiner states that "Mr. Dexter stated that if claim 30 was clarified to define that the front portion and the rear portion each have their own separate hinge connection to another portion of the housing, that such appears that it would define over Schafer." Subsequently, claim 30 was incorporated into independent claim 26 and amended to recite that the front and rear covers are each hingedly coupled to a remainder of the housing. Nevertheless, the Examiner has now, in the Office Action of October 3, 2002, applied the exact same prior art in a rejection which is, almost verbatim, the same as that presented before the interview. In the Office Action of October 3, 2002, the Examiner notes, without any further explanation or reference to the acknowledgment of patentability made during the interview, that Applicants' arguments "with respect to the claims have been considered but are moot in view of the new ground(s) for rejection." Applicants respectfully assert that there are no "new" grounds for rejection. Subject matter was agreed by Mr. Dexter to be patentable over Schafer on March 5, 2002. Applicants relied upon such

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agreement and acknowledged patentability and responded to the prior Office Action accordingly.

Applicants reiterate and incorporate by reference the arguments and reasons set forth in the prior amendments in this case to establish the non-obvious nature of the invention of the rejected claims with respect to Schafer.

Applicants respectfully ask Mr. Dexter to honor his agreement made during the interview. If further changes to the claim language are required by the Examiner to conform with the configuration agreed to during the interview to distinguish the applied art of Schafer, Applicants are willing to entertain any such changes.

Conclusion

As a result of the amendments to the claims and the remarks given herein, applicant respectfully asserts that the rejections of the pending claims have been overcome. Further, applicant asserts that claims 26-29, 31 and 41-44 as presented herein are allowable and request notification of same at the Examiner's earliest convenience.


If the Examiner feels that any matter in this case requires further attention prior to issuing a Notice of Allowance, he is respectfully asked to telephone the undersigned attorney so that the matter may be promptly resolved.

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Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The attached page(s) is/are captioned "Version with markings to show changes made."

Respectfully submitted,

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

41.(NEW) A dispenser structure as in Claim 26 wherein said front cover has an arcuate portion for guiding said tickets towards said outlet.

42.(NEW) A dispenser structure as in Claim 26 wherein said transparent portion is arcuate for guiding said tickets towards said outlet.

43.(NEW) A dispenser structure as in Claim 27 wherein said transparent portion is arcuate.

44.(NEW) A dispenser structure as in Claim 26 wherein said housing is mounted on said counter top.